

## **REMARKS/ARGUMENTS**

Applicant respectfully requests further examination of this application in view of the following remarks and arguments.

### **Drawings**

16 new corrected drawing sheets, labeled "REPLACEMENT SHEETS" in compliance with 37 CFR §1.121(d) are submitted herewith for Applicant's Figures. These replacement sheets eliminate hand drawn numerals. No new matter has been added.

### **Claim Objections**

The Office has objected to claims 27-28, 55-56, and 84-86. Amendments to claims 55, 56, and 84-86 have been performed to cure the objections.

### **Claim Objections**

Applicant notes that claims 55 and 56 depend from different base claims, therefore the claims do not recite the same limitation when read in context.

Amendments to claims 27-28 and 84-86 have been made.

### **Claim Rejection under 35 U.S.C. §101**

The Office has rejected claims 1-7 and 11 as being directed to nonstatutory subject matter.

**Response to Rejection of Claims 1-13, 34-41, and 64-73 under 35 U.S.C. §101**

With respect to the 35 U.S.C. §101 rejection, the currently amended version of these claims clearly teaches the creation of information that did not previously exist before the application of Applicant's method. Clearly at least a transformation has occurred between a storable representation of an audio/video interaction and the input of analysis data into a data processing device. Such teaching falls within the statutory framework of 35 U.S.C. 101. Applicant respectfully requests the removal of the 35 U.S.C. §101 rejection.

**Claim Rejection under 35 U.S.C. §102, Freedman et al.**

The Office has rejected claims 1, 3-12, 14, 16-32, 34, 36-40, 42, and 44-62 as being anticipated by Freedman et al. (hereinafter Freedman) (WO 03/009175).

**Response to Rejection of Claims 1, 3-12, 14, 16-32, 34, 36-40, 42, and 44-62 under 35 U.S.C. §102**

With respect to the 35 U.S.C. 102 (a) rejections, respectfully, the Office has not made out the required *prima facie* case of anticipation with the Freedman reference.

A *prima facie* case of anticipation is established when the Office provides:

1. a single prior art reference
2. teaches or enables
3. each of the claimed elements (arranged as in the claim)
4. expressly or inherently
5. as interpreted by one of ordinary skill in the art.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987), Scripps Clinic & Research Found. V. Genentech Inc., 927 F.2d 1565, 18 USPQ 2d 1001, 1010 (Fed. Cir. 1991). MPEP 2131. "The identical invention must be shown in as complete detail as is contained in the...claim." Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

**Applicant's Independent Claims 1, 14, 34, 42, 64, 74, 87, and 97.**

In the sections of Freedman proffered by the Office, as anticipatory of Applicant's claims, Freedman does not teach, amongst other things, Applicant's claim limitations;

wherein during the analyzing an analyst observes the storable representation and performs an evaluation of the visual and audio aspects of the audio/video interaction to determine analysis data that are related to a quality of service quality provided to the customer by the agent

Applicant's Claim 1 (Currently amended).

the storage device is configured to receive and store a plurality of storable representations of an audio/video interactions between an agents of a business and a customers of the business, the storable representations are is capable of being analyzed by analysts to estimate analysis data, wherein the analysis data is related to a quality of for service

Applicant's Claim 14 (Currently amended).

wherein during the analyzing an analyst observes the storable representation and evaluates the visual aspects of the audio/video interaction to determine

the analysis data that are related to a quality of service quality provided to the customer by the agent

Applicant's Claim 34 (Currently amended).

wherein during the analyst's analysis of audio/video interaction, the analyst uses a criterion selected from the group consisting of did the agent projected a confident visual appearance, what effect did the agent's body language have on the customer, did the agent make sufficient eye contact with the customer, did the customer appear at ease, and did the customer appear to become upset during the course of the interaction

Applicant's Claim 42 (Currently amended).

inputting the ~~generating~~ analysis data into a data processing device, wherein the analysis data is derived from the visual aspects of the audio/video interaction associated with the analyzing, and the analyst is one of a group of calibrated analysts who have been trained to produce scores within a set deviation of each other in response to a common input, wherein a calibration selected from the group consisting of an internal calibration, a client calibration, an anonymous transaction simulation, and a quality audit has been applied to the analysts

Applicant's Claim 64 (Currently amended).

wherein the analysts observe the storable representations and perform evaluations of the visual and audio aspects of the audio/video interactions to determine analysis data that are related to quality of service provided to the customers

Applicant's Claim 74 (Currently amended).

playing the storable representation, wherein during the playing an analyst observes the storable representation and performs an evaluation of the visual aspects of the audio/video interaction to determine analysis data that are related to a quality of the service quality provided to the customer by the agent

Applicant's Claim 87 (Currently amended).

playing the storable representation, wherein during the playing the analyst observes the storable representation and performs an evaluation of the visual aspects of the audio/video interaction to determine analysis data that are related to a quality of the service quality provided to the customer by the agent

Applicant's Claim 97 (Currently amended).

Freedman's automated system does not teach how to analyze an audio/video interaction of a customer agent interaction in order to obtain an estimate of the quality of service rendered by an agent to a customer as applicant does. Analyzing the video dimension requires analysis of the facial expressions of the agent and the customer in order to extract the quality of service rendered during the transaction. The sections of Freedman proffered by the Office do not teach this. As such, the Freedman reference does not anticipate Applicant's claims because Freedman does not teach all of Applicant's claim limitations found in the independent claims. Applicant respectfully requests that the Office withdraw the 35 USC 102(a) rejection based on Freedman and allow independent claims 1, 14, 34, 42, 64, 74, 87, and 97 and the claims that depend therefrom.

**Applicant's Independent Claim 83.**

Amongst other things, Freedman does not teach Applicant's claim limitations as shown below:

analysis data corresponding to analyzed audio/video interactions between an agent and customers, wherein the agent's performance is analyzed at least ~~once~~ X times a day and analysis of the audio/video interactions proceeds on a substantially continuing basis by a group of calibrated analysts wherein a calibration technique selected from the group consisting of an internal calibration, a client calibration, an anonymous transaction simulation, and a quality audit has been applied to the calibrated analysts and X is greater than or equal to one agent

Applicant's Claim 83 (Currently amended).

Amongst other things, Freedman's automated system does not teach high frequency sampling of an agent's customer interactions nor does it teach calibration of a group of analysts as Applicant does. The sections of Freedman proffered by the Office do not teach Applicant's claim limitations as illustrated above. As such, the Freedman reference does not anticipate Applicant's claims because Freedman does not teach all of Applicant's claim limitations as found in the independent claims. Applicant respectfully requests that the Office withdraw the 35 USC 102(a) rejection based on Freedman and allow independent claims 83 and all the claims that depend therefrom.

In the current Office Action at pages 5-7 various passages from Freedman are proffered by the Office as anticipatory of Applicant's dependent claims 3-12, 16-32, 36-40, and 44-62. In the sections above, Applicant has distinguished Freedman and has shown

that Freedman is not anticipatory of the independent claims from which these dependent claims depend. Therefore, Freedman does not serve as an anticipatory for the Applicant's dependent claims. Applicant requests the removal of the 35 U.S.C. §102(a) rejection and the allowance of all of the pending claims.

**Claim Rejection under 35 U.S.C. §103(a)**

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Response to Rejection of Claims 2, 13, 15, 33, 35, 41, 43, and 63-104, under 35 U.S.C. § 103(a)**

The Office has rejected claims 2, 13, 15, 33, 35, 41, 43, and 63-104 under 35 U.S.C. §103(a) as being unpatentable over Freedman.

Applicant respectfully points out that according to the MPEP §2142, "to establish a *prima facie* case of obviousness, three basic criteria must be met:

- 1<sup>st</sup> there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine reference teachings;

- 2<sup>nd</sup> there must be a reasonable expectation of success;
- 3<sup>rd</sup> the prior art reference (or references when combined) must teach or suggest all of the claim limitations.”

These criteria have not been met by the Office’s rejection of Applicant’s claims 2, 13, 15, 33, 35, 41, 43, and 63-104.

As noted above, Freedman does not teach all of the limitations contained in claims 1, 14, 34, 42, 64, 74, 83, 87, and 97 upon which claims 2, 13, 15, 33, 35, 41, 43, and 63-104 depend. Therefore, Freedman does not render obvious what Applicant has claimed.

Concerning claims 65, 83, and 93, the Office has proffered Freedman page 13, lines 6-20 as teaching Applicant’s high frequency methods. Respectfully, these passages of Freedman do not teach Applicant’s claim limitations. The quoted text is irrelevant to establishing a monitoring frequency and does not even suggest monitoring frequency.

With respect to the Office taking Official Notice, Applicant disagrees with the statement made therein. Such Official notice does not render Applicant’s claims obvious.

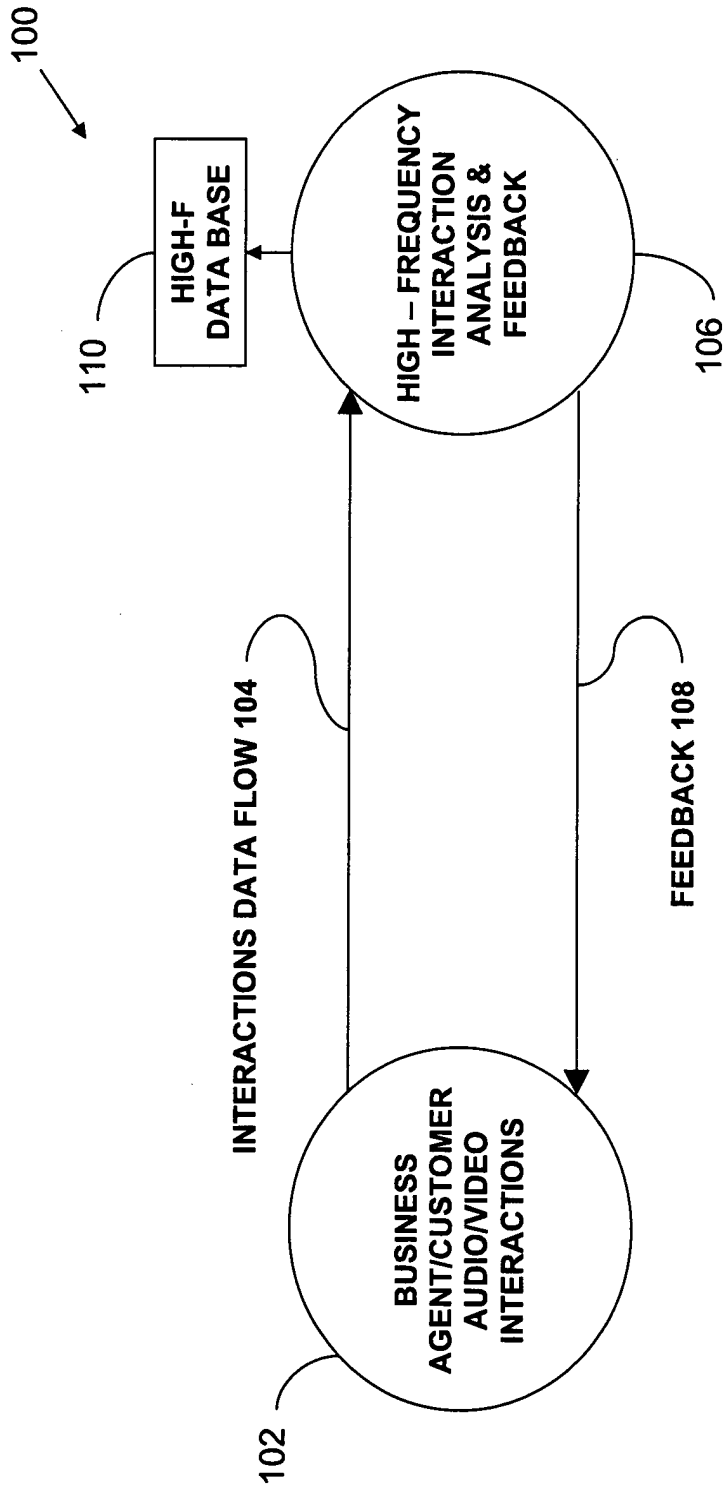
Freedman fails to disclose or make obvious what Applicant has claimed and the Office’s taking of Official Notice fails to cure this defect. Therefore, Applicant requests the allowance of all pending claims.



The cited art of record, either singly or in combination, does not teach all of Applicant's claim elements. Therefore, the Office has failed to make out the required *prima facie* case of obviousness required to sustain a 35 U.S.C. §103(a) rejection and the rejection should be withdrawn.

FIG. 1

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### CONCLUSION

Claims 1, 5, 6, 13, 14, 15, 16, 17, 18, 22, 23, 27, 28, 33, 34, 35, 37, 41, 42, 64, 65, 66, 74, 76, 77, 78, 83, 84, 85, 86, 87, 91, 92, 93, 94, 96, 97, and 98 are currently amended.

Applicant respectfully submits that all claims 104 are in condition for allowance and requests such.

Communication via cleartext email is authorized.

Respectfully submitted,

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January 5, 2009  
Date

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### CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that I am causing this paper or fee to be deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450 Alexandria, VA 22313-1450.

Date of Deposit: January 5, 2009

Mark S. Peloquin, Esq.  
(Typed or printed name of person transmitting paper or fee)

Mark S. Peloquin, Esq. January 5, 2009  
(Signature of person transmitting paper or fee) Date